

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4094 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

DINESHBHAI SHANKARBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

MR YN RAVANI for Petitioner

Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the detention order dated 27-4-96 passed by the District Magistrate, Bharuch whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 29-4-96 and since then the

petitioner is under detention lodged at Rajkot Jail, Rajkot.

2. The present Special Civil Application was filed in this court on 17-6-96 and on 18-6-96 rule returnable on 10-7-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that 5 criminal cases under the Bombay Prohibition Act were registered against the petitioner at the Police Station, Bharuch (Rural) and Bharuch City 'B' Division during the year 1995. 4 matters out of the 5 were pending trial before the Courts. After taking notice of the allegations in these 5 criminal matters, the detaining authority has taken into consideration the statements made by 5 witnesses on 2-2-96, 3-2-96 and 21-2-96. The detaining authority has expressed that the petitioner is a bootlegger and was engaged in anti social activities and the unauthorised business of liquor. It has also been recorded that the petitioner has been using weapons against the witnesses, has been publicly beating them and persons who are not co-operating with him in the business of unauthorised liquor are given public beating by the petitioner alongwith his associates and he has created an atmosphere of terror and fear in the concerned area and the witnesses were not able to come in open against the petitioner being frightened and afraid of him. The detention order has been passed to prevent the petitioner from continuing with his anti social activities as a bootlegger.

4. The detention order has been challenged on more than one grounds. But the learned counsel for the petitioner has kept his arguments confined to the question that even if the allegations and materials against the petitioner are taken to be correct on its face value, it can not be said that a case of breach of public order is made out. At the most it is a case of breach of law and order.

5. For the reasons given in the judgment dated 4-10-96 in Special Civil Application No.3879/96 it is found that the allegations and materials, on the basis of which the detention order has been passed, do not constitute a case of breach of public order and it is at the most a case of breach of law and order. The detention order, therefore, can not be sustained in the eye of law.

6. Accordingly this Special Civil Application is allowed and the impugned detention order dated 27-4-96 passed by the District Magistrate, Bharuch is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.